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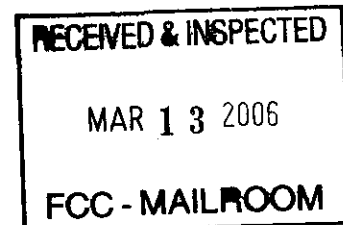
Hmong Academy Charter School

1300 Olson Memorial Highway, Minneapolis, MN 55411

Office: (612) 377-0221 . Fax: (612) 455-6950

March 10, 2006

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743



Request for Review
CC Docket No. 02-6
CC Docket No. 96-45

To Whom It May Concern:

I am writing on behalf of Hmong Academy, located at 1300 Olson Memorial Highway, Minneapolis, MN 55411 to appeal a Schools and Libraries Division (SLD) decision that appears to be in error. My appeal relates to the following:

Billed Entity Applicant Name:	Hmong Academy
Funding Request Number:	1286446
Form 471 Application Number:	467565
Contact Name:	Christianna Hang
Contact Phone Number:	612 /455-6951
Contact Fax Number:	612/455-6950
Contact Email:	christiannahang@hmongacademy.org

This Request for Review is for the reason that Hmong Academy has been denied E-Rate funding by SLD because of a contract violation for Funding Year 2005. An appeal letter was mailed to SLD on November 10, 2005. A denial letter from SLD was received by Hmong Academy District on January 13, 2006.

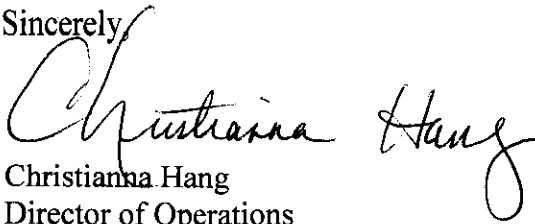
SLD contends that there was no contract for the requested products/services signed and dated by both parties prior to the filing of the Form 471. Please find attached a copy of the SLD denial letter. Also attached is a letter from the Corporate Counsel of Ban-Koe Systems, Inc. explaining the contract date and how their contract meets the legal requirements under the UCC for an enforceable contract.

It is extremely important and vital to Hmong Academy to receive E-Rate funds. We contend that the Ban-Koe contract did meet the legal obligation of having to be signed and dated by both parties prior to the filing of the Form 471 for Funding Year 2005.

No. of Copies rec'd 0
List A B C D E

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Christianna Hang". The signature is fluid and cursive, with the first name "Christianna" and the last name "Hang" clearly distinguishable.

Christianna Hang
Director of Operations
Hmong Academy
1300 Olson Memorial Hwy,
Minneapolis, MN 55411

CC: Funding Commitment Report dated 9/21/2005
Ban-Koe explanation letter dated 11/1/2005
Appeal Letter to SLD dated 11/10/2005
USAC denial letter dated 1/13/2006
Letter from Ban-Koe Corporate Counsel dated 3/9/2006



Hmong Academy

Charter School

1300 Olson Memorial Highway, Minneapolis, MN 55411

Office: (612) 377-0221 . Fax: (612) 455-6950

November 10, 2005

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondance Unit
80 South Jefferson Road
Whippany, NJ 07981

RE: Funding Year 2005-2006 Appeal for Billed Entity Number 16020979

Dear Sir or Madam:

I am writing on behalf Hmong Academy, located at 1300 Olson Memorial Highway, Minneapolis, MN 55411 to appeal an application decision that appears to be in error. My appeal relates to the following:

Billed Entity Applicant Name: Hmong Academy
Funding Request Number: 1286446
Form 471 Application Number: 467565
Contact Name: Christianna Hang
Contact Phone Number: 612/455-6951
Contact Fax Number: 612/455-6950
Contact E-mail: chang@hmongacademy.org

The reason given for the above denial is that "FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471. This requirement was not met".

In support of this appeal, I enclose the following:

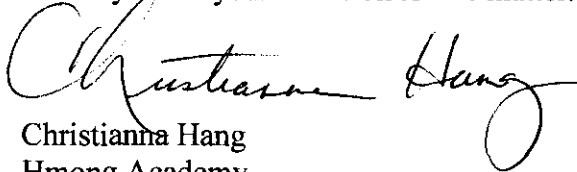
Photocopy of denial letter dated 09/21/2005.
Photocopy of Ban-Koe Companies Sales Agreement
Photocopy of Letter from Ban-Koe

Please find attached a copy of a signed Ban-Koe Companies quote dated 02/08/2005, Job Name, ERATE 2005. Per E-Rate rules, there are signatures of both Ban-Koe Companies and Hmong Academy representative as well as the automatic Ban-Koe date stamp at the top right corner of the agreement. Also enclosed is a letter from Ban-Koe Companies

explaining how their Sales Agreements are automatically dated on the day that the customer signs the agreement. It is not possible for this date to be altered as the cell is password protected and the password is unknown to the users.

It is extremely important and vital to Hmong Academy to receive E-Rate funds to successfully continue their School. Without the continuation of funds, at a 90% discount, Hmong Academy will suffer substantial financial difficulties.

Thank you for your attention to this matter.

A handwritten signature in cursive script, appearing to read "Christianna Hang". The signature is written in dark ink and is positioned above the printed name and address.

Christianna Hang
Hmong Academy
1300 Olson Memorial Highway
Minneapolis, MN 55411
612/455-6951



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2005-2006

January 13, 2006

Christianna Hang
Hmong Academy
1300 Olson Memorial Highway
Minneapolis, MN 55411

Re: Applicant Name: HMONG ACADEMY
Billed Entity Number: 16020979
Form 471 Application Number: 467565
Funding Request Number(s): 1286446
Your Correspondence Dated: November 10, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1286446
Decision on Appeal: **Denied**
Explanation:

- On appeal, you counter the SLD decision of denying the funding request for having no contract for the requested products/services signed and dated by both parties prior to the filing of the Form 471. You assert that the Sales Agreement has signatures of both Ban-Koe Companies and Hmong Academy representative as well as the automatic Ban-Koe date stamp at the top right corner of the agreement. You further state that the Sales Agreement is automatically dated on the day that the customer signs the agreement. The date cannot be altered because it is password-protected according to Ban-Koe Companies explanation. In support of your appeal, you provide a copy of your Funding Commitment Decision Letter, the Ban-Koe Companies Sales Agreement and a letter from Ban-Koe.

- Upon thorough review of the appeal and all relevant documentation, it was *determined that Hmong Academy did not have a contract for the products/services signed and dated by both parties prior to the filing of the Form 471. During review of your application, Bonnie Overweg (consultant) provided a contract from Ban-Koe Companies for FRN 1286446. The contract was not dated by any parties involved, which violated the FCC guidelines regarding the 5th order. On appeal, the service provider (Ban-Koe) provided by a letter explaining the automatic generation of the date on the contract stating that "The contract date on all Ban-Koe Sales Contracts is produced automatically by the Excel formula [=now()] and is located at the top right corner of the contract, which is the date an authorized individual signs the contract for the company." The letter indicates that Ban-Koe may have signed and dated the contract on February 8, 2005, yet does not indicate when the applicant signed and dated the contract. During review of another application (Form 471 application #458813 for Eagle Ridge Academy), it was determined that they had a similar contract issue with Ban-Koe. The applicant of Eagle Ridge Academy was contacted and asked to provide pages 2 and 3 of the Sales Agreement. In a response dated December 7, 2005, Ms. Overweg provided pages 2 and 3 of the Ban-Koe Sales Agreement (for Eagle Ridge Academy). Based on thorough review of the Ban-Koe Sales Agreement (same as Hmong Academy), it is determined that it does not include a statement that indicates that the authorized signors agree to the acceptable and/or executed contract date is the same date stated within the body of the contract. Therefore, a contract date could not be determined. You have failed to provide evidence that SLD has erred in its decision on appeal.*
- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.¹ The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.² You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you

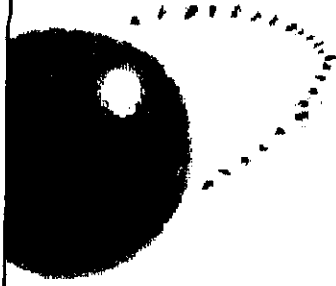
¹ Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism. File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

² See Instructions for Completing the Schools and Libraries Universal Service. Services Ordered and Certification Form, OMB 3060-0806 (October 2004) at page 20.

are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Schools and Libraries, Letter of Appeal
Box 125 - Correspondence Unit, 80 South
Jefferson Road, Whippany, NJ 07981

The contract date on all Ban-Koe Sales Contracts is produced automatically by the Excel formula [=now()] and is located at the top right corner of the contract, which is the date an authorized individual signs the contract for the company. In order to maintain the integrity of this date, this cell is password protected and the password is unknown to users and/or those who write up sales contracts.

Minnesota
Corporate Headquarters
Ban-Koe Companies, Inc.
100 W. Bloomington Fwy
Minneapolis, MN 55431
(612) 888-6688

Illinois
40 State Street - Suite A
Aurora, IL 61602
(708) 676-1147

Iowa
20 Lincoln Road
Attendorf, IA 52722
(563) 359-8663

Iowa
100 Grand Avenue
Des Moines, IA 50309
(515) 244-2139

Michigan
100 Costa NE
Grand Rapids, MI 49525
(616) 364-8877

North Dakota
2 Broadway #3
Fargo, ND 58102
(701) 293-9988

South Dakota
12 North Main Ave.
Sioux Falls, SD 57104
(605) 977-6612

Wisconsin
1 S. Chestnut
Crescent, MN 55947
(763) 895-4081

www.bankoe.com

Signature: 

Date: 11-1-05

FUNDING COMMITMENT REPORT
Billed Entity Name: HMONG ACADEMY
BEN: 16020979
Funding Year: 2005

Form 471 Application Number: 467565
Funding Request Number: 1286446
Funding Status: Not Funded
Category of Service: Internal Connections
Form 470 Application Number: 426200000
SPIN: 143021171
Service Provider Name: Ban-Koe Systems Inc.
Contract Number: SRATE 2005
Billing Account Number: N/A
Service Start Date: 07/01/2005
Contract Expiration Date: 06/30/2006
Site Identifier: 16020979
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$18,373.00
Pre-discount Amount: \$18,373.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Contract Violation
Funding Commitment Decision Explanation: FCC rules require that a contract for the products/services be signed and dated by both parties prior to the filing of the Form 471. This requirement was not met.
FCDL Date: 09/21/2005
Wave Number: 013

IMPORTANT REMINDERS & DEADLINES**Billed Entity Number : 16020979****Name of Billed Entity: HMONG ACADEMY**

The following information is provided to assist you throughout the application process. We recommend that you keep it in an easily accessible location and that you share it with the appropriate members of your organization.

FCC REGISTRATION NUMBERS (FCC RNS) - Effective November 1, 2004, the FCC's Fifth Order (FCC 04-190 released August 13, 2004) requires E-rate program participants to have FCC Registration Numbers. Please continue to review our web site for additional guidance.

FORM 486 DEADLINE - The Form 486 must be postmarked no later than 120 days after the Service Start Date you report on the Form 486 or no later than 120 days after the date of the Funding Commitment Decision Letter, whichever is later. If you are required to have a Technology Plan, that plan must cover all 12 months of the funding year. You must indicate the name of the SLD-Certified Technology Plan Approver (TPA) prior to the commencement of discounted services for this funding year. You must indicate the name of the SLD-Certified TPA who approved your plan in your Form 486, and you must retain your approval letter and documentation of your monitoring of the progress toward your stated goals.

CHILDREN'S INTERNET PROTECTION ACT (CIPA) - Please review the CIPA guidance in the Form 486 Instructions, Section II, "IMPACT OF CIPA REQUIREMENTS ON FORM 486."

INVOICE DEADLINE - Invoices must be postmarked no later than 120 days after the last date to receive service - including extensions - or 120 days after the date of the Form 486 Notification Letter, whichever is later. Invoices should not be submitted until the invoiced products and services are being delivered and billed, and (for BEAR Forms) the provider has been paid.

OBLIGATION TO PAY NON-DISCOUNT PORTION - Applicants are required to pay the non-discount portion of the cost of the products and/or services. Service providers are required to bill applicants for the non-discount portion. The FCC has stated that requiring applicants to pay their share ensures efficiency and accountability in the program. FCC 04-190 concluded that a presumptively reasonable timeframe for a beneficiary to pay its non-discount share is 90 days after the completion of services. If you are using a trade-in as part of your non-discount portion, please refer to the web site for more information.

DOCUMENTATION RETENTION - FCC rules require that documents demonstrating compliance with the statute and Commission rules must be retained for a period of at least five years after the last day of service delivered. See "Document Retention Requirements" in FCC 04-190 for a descriptive list of many of the documents you must retain.

SUSPENSION AND DEBARMENT - Persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the Schools and Libraries Support Mechanism are subject to suspension and debarment from the program.

FREE SERVICES ADVISORY - Applicants and service providers are prohibited from using the Schools and Libraries Support Mechanism to subsidize the procurement of ineligible or unrequested products and services, or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.

Complete program information - including more information on these reminders - is posted to the SLD section of the USAC web site at www.sl.universalservice.org. You may also contact the SLD Client Service Bureau by e-mail using the "Submit a Question" link on the web site, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

**Universal Service Administrative Company**

Schools & Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2005: 07/01/2005 - 06/30/2006)

September 21, 2005

Christianna Hang
HMONG ACADEMY
1300 OLSON MEMORIAL HIGHWAY
SUITE A
MINNEAPOLIS, MN 55411

Re: Form 471 Application Number: 467565
Funding Year 2005: 07/01/2005 - 06/30/2006
Billed Entity Number: 16020979
Billed Entity FCC RN: 001194012
Applicant's Form Identifier: HMONG-05-2

Thank you for your Funding Year 2005 E-rate application and for any assistance you provided throughout our review. Here is the current status of the funding request(s) featured in the Funding Commitment Report at the end of this letter.

- The amount, \$16,535.70 is "Denied."

Please refer to the Funding Commitment Report on the page following this letter for specific funding request decisions and explanations.

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you throughout the application process.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA Requirements
- File Form 486
- Invoice the SLD using the Form 474 (service provider) or Form 472 (Billed Entity) - as products and services are being delivered and billed

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the Funding Request Number(s) (FRNs) from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) after you file your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that provides a definition for each line of the Report.

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) e-mail address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey, 07981

Visit us online at: www.sl.universalservice.org

9, 2006

RECEIVED & INSPECTED

MAR 13 2006

FCC - MAILROOM

Ban-Koe Companies

Federal Communications Commission
Office of the Secretary
445 - 12th Street Southwest
Washington DC 20554

Subject: CC Docket No. 02-6 - Request for Review of USAC (SLD)
Administrator's Decision on Appeal

This is a letter supporting the school districts' appeals requesting review of decisions made by the Schools and Libraries Division of the Universal Service Administrative Company (SLD), which denied 2005 funding to:

Minnesota

Corporate Headquarters
Ban-Koe Companies, Inc.
9100 W. Bloomington Fwy.
Minneapolis, MN 55431
(952) 888-6688

Illinois

100 State Street - Suite A
Peoria, IL 61602
(309) 676-1147

Iowa

1020 Lincoln Road
Bettendorf, IA 52722
(319) 359-8663

Iowa

1300 Grand Avenue
Des Moines, IA 50309
(515) 244-2139

Michigan

3900 Costa NE
Grand Rapids, MI 49525
(616) 364-8877

North Dakota

412 Broadway #3
Fargo, ND 58102
(701) 293-9988

South Dakota

4312 North Hainje Ave.
Sioux Falls, SD 57104
(605) 977-6612

Wisconsin

201 S. Chestnut
La Crescent, MN 55947
(507) 895-4081

Applicant Name: HMONG ACADEMY
FCDL Date: 1/12/2006
Billed Entity Number: 16020979
FCC Form 471 Application Number: 467565
Funding Request Number: 1286446

Applicant Name: EAGLE RIDGE ACADEMY
FCDL Date: 1/13/2006
Billed Entity Number: 16020980
FCC Form 471 Application Number: 458813
Funding Request Number: 1260366

Applicant Name: BEACON ACADEMY
FCDL Date: 1/13/2006
Billed Entity Number: 16021080
FCC Form 471 Application Number: 477882
Funding Request Number: 1319538

The reason that the SLD denied these applications for e-rate funding was because it decided these applicants did not have a signed contract for services in place with their service provider (Ban-Koe Companies) for services other than tariffed or month-to-month services at the time that they submitted their Form 471 applications.

The Code of Federal Regulations (CFR) states: "An eligible school, library or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator." 47 CFR § 54.504(4)(c) (2005).

The CFR does not define "contract." Under the Uniform Commercial Code (UCC), § 2-201, there are only three elements required to create an enforceable, legally binding contract. They are: 1) a memorandum evidencing a contract for the sale of goods; 2) the memorandum must be signed; and 3) the memorandum must have a quantity term or a method to determine the quantity.

The date of either the planned performance or the signatures is not required.

The SLD requires the contract to be signed and dated by both parties. The contracts at issue in this case were signed by both parties. However, there is only one date, rather than two, printed on the contracts.

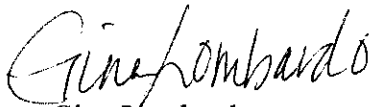
Because of the failure to have two signature dates, the SLD has erroneously stated that there were no contracts in place for the requested funding. This is obviously not the case, as the contracts meet the legal requirements under the UCC for an enforceable contract.

The vendor contracts were not accepted based on a minor technicality.

Ban-Koe Companies' contracts meet the letter of the law for enforceability under the UCC. They also should meet the spirit of the SLD requirement.

For these reasons, Ban-Koe Companies write this letter in support of the school districts' appeals.

Sincerely,

A handwritten signature in cursive script that reads "Gina Lombardo".

Gina Lombardo
Corporate Counsel